

REMARKS

This Application has been carefully reviewed in light of the final Office Action mailed February 14, 2007 (the "Office Action"). At the time of the Office Action, Claims 1-58 were pending in the application. The Office Action rejects Claims 1-58. Applicants respectfully request reconsideration and favorable action in this case.

Section 101 Rejections

The Office Action rejects Claim 53 under 35 U.S.C. 101 because the Office Action suggests that the claimed invention is directed to non-statutory subject matter. Applicants respectfully traverse this rejection.

The Office Action states that the claim "merely involves the manipulation of an abstract idea 'determining an amount of a total payout' and/or 'determining an amount to be paid'. There is no practical application of this abstract idea claimed. Thus the claims do not meet the requirements for statutory subject matter under 35 U.S.C. 101." Office Action, page 2.

35 U.S.C. § 101 states that "[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title." The Supreme Court has stated that the claimed invention must produce a "useful, concrete and tangible result." *State Street Bank & Trust Co. v. Signature Financial Group Inc.*, 47 USPQ2d 1596, 1601-02 (Fed. Cir. 1998). Furthermore, the M.P.E.P. states:

The applicant is in the best position to explain why an invention is believed useful. Office personnel should therefore focus their efforts on pointing out statements made in the specification that identify all practical applications for the invention. Office personnel should rely on such statements throughout the examination when assessing the invention for compliance with all statutory criteria. An applicant may assert more than one practical application, but only one is necessary to satisfy the utility requirement.

M.P.E.P. § 2106. Applicants respectfully submit that Claim 53 produces a useful, concrete and tangible result. For example, Claim 53 recites a method for managing bets that includes determining an amount of a total payout based at least in part on a betting pool formed by

combining each bet amount and determining one or more winning bets based on event results. The determined total payout amount may be paid to bettors of the determined one or more winning bets. Applicants' Specification discusses embodiments with respect to horseracing, football and other fields. With respect to a particular embodiment of Applicants' invention, the Specification states that bettors are given the opportunity to select a certain number of events out of a group of events and to bet on each event selected, with all such bets going to a pool for distribution to winners of such bets. *See* Specification, page 5, lines 4-7. A bettor may thus select events that the bettor feels he has the best chance to correctly pick the winners. *See id.* at page 5, lines 7-8. Applicants' specification thus asserts at least one practical application of Applicants' invention. Therefore, Applicants respectfully submit that the Examiner's rejection of Claim 53 under 35 U.S.C. § 101 be withdrawn.

Section 112 Rejections

The Office Action rejects Claims 54 and 55 as failing to define the invention in the manner required by U.S.C. §112, second paragraph. Applicants respectfully traverse these rejections.

The Office Action suggests that the claims "are narrative in form and replete with indefinite and functional or operational language. The structure, which goes to make up the device, must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device." Office Action, page 2.

The Office Action cites nothing in either the M.P.E.P. or caselaw to support these rejections. The Office Action makes ambiguous statements regarding indefinite, functional and operational language and structure without correlating these statements with the rejected claims. Claim 54 is a method claim that depends from method Claim 1. It recites that the at least one selected event of the first bet comprising a different event comprises a different type of event from the at least one selected event of the second bet. Its scope would be clear to one of ordinary skill in the art. There is no improper functional or operational language in the claim. Moreover, Claim 55 is a system claim that depends from system Claim 23. It recites the same language as Claim 54. Again, there is no improper functional or operational

language in the claim. Furthermore, the structure of the system is properly recited when reading the claim in context with its base claim, Claim 23. Therefore, for at least these reasons, Applicants respectfully request withdrawal of these rejections.

Section 102 Rejections

The Examiner rejects Claims 1-12, 14-17, 22-34, 36-39, 44-49, 52, 53 and 56-58 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,554,708B1 to Brenner et al. ("*Brenner*"). Applicants respectfully traverse these rejections.

The Office Action maintains the same rejections made in a previous office action. Applicants previously pointed out that *Brenner* generally discloses receiving bets including wager type and selected runners and also generally discloses displaying odds and payouts. *See Brennan*, col. 11, line 51 – col. 12, line 9 and col. 13, line 41 – col. 14, line 8. However, *Brenner* does not disclose determining an amount of a total payout based at least in part on a betting pool formed from a combination of bet amounts of bets that each include a selection of a first number of events wherein at least one selected event of a first bet of the bets comprises a different event from at least one selected event of a second bet of the bets. Nowhere does *Brenner* disclose, teach or suggest determining a total payout based on a betting pool of bet amounts for a plurality of bets that may include at least one different event.

In response, the Office Action cites to the following statement from *Brenner* – "[f]or example, presently available terminals may allow a user to view "win" odds (the amount wagered on a runner to win versus the amount wagered on competing runners to win)." Office Action, page 7. The Office Action then states that "one can understand from wagered on competing runners that is a pool of bets and that all the payback odds are [dependent] on the total wagers." Office Action, page 7. However, the Office Action fails to account for all claim elements in making this conclusory determination. For example, Claim 1 recites that the plurality of bets combined to form the betting pool from which a total payout amount is determined include selected events wherein at least one selected event of a first bet of the plurality of bets comprises a different event from at least one selected event of a second bet of the plurality of bets. The mere suggestion in the Office Action that *Brenner* suggests that

payback odds are dependent on total wagers does not provide the necessary disclosure to support an anticipation rejection that a plurality of bets combined to form a betting pool from which a total payout amount is determined included selected events comprising at least one different event. Nowhere does *Brenner* disclose, teach or suggest determining a total payout based on a betting pool of bet amounts for a plurality of bets that may include at least one different event. Therefore, for at least these reasons, Applicants respectfully submit that Claims 1, 23, 45 and 53 are patentable over the cited art used in the rejections and request that the rejections of these claims be withdrawn.

Claims 2-12, 14-17 and 22 each depends, either directly or indirectly, from independent Claim 1; Claims 24-34, 36-39 and 44 each depends, either directly or indirectly, from independent Claim 23; and Claims 46-49 and 52 each depends, either directly or indirectly, from independent Claim 45. Therefore, for at least the reasons discussed above with respect to Claims 1, 23 and 45, Applicants respectfully submit that Claims 2-12, 14-17, 22, 24-34, 36-39, 44, 46-49 and 52 are patentable over the cited art used in the rejections and request that the rejections of these claims be withdrawn.

Claim 56 recites determining an amount of a total payout based at least in part on a betting pool formed from a combination of bet amounts of a first bet that includes a first selected number of events comprising at least a first event and a second bet that includes a second selected number of events comprising at least a second event different from the first event. As indicated above, *Brenner* does not disclose determining a payout amount based on a betting pool formed from a combination of bet amounts of best that include different events. Therefore, for at least these reasons, Applicants respectfully submit that Claim 56 is patentable over the cited art used in the rejections and request that the rejection of this claim be withdrawn.

Claims 57 and 58 each depends from Claim 56. Applicants respectfully submit that Claims 57 and 58 are allowable over the cited art used in the previous rejections for at least the reasons discussed above with respect to Claim 56.

Section 103 Rejections

The Examiner rejects Claims 18-21, 40-43 and 50-51 under 35 U.S.C. 103(a) as being unpatentable over *Brenner* as applied to the claims above, and further in view of U.S. Patent 5,842,921 to Mindes, et al. ("*Mindes*"). The Examiner rejects Claims 13, 14, 35 and 36 under 35 U.S.C. 103(a) as being unpatentable over *Brenner* as applied to the claims above, and further in view of U.S. Patent 5,452,899 to Skratulia, et al. ("*Skratulia*"). Applicants respectfully traverse these rejections.

Claims 13-14 and 18-21 each depends, either directly or indirectly, from independent Claim 1; Claims 35-36 and 40-43 each depends, either directly or indirectly, from independent Claim 23; and Claims 50-51 each depends, either directly or indirectly, from independent Claim 45. Therefore, for at least the reasons discussed above with respect to Claims 1, 23 and 45, Applicants respectfully submit that Claims 13-14, 18-21, 35-36, 40-43 and 50-51 are patentable over the cited art used in the rejections and request that the rejections of these claims be withdrawn.

CONCLUSION

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Chad C. Walters, Attorney for Applicants, at the Examiner's convenience at (214) 953-6511.

No fee is believed to be due. However, the Commissioner is hereby authorized to charge any fees or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicants

A handwritten signature in black ink, appearing to read "Chad C. Walters", with a stylized flourish at the end.

Chad C. Walters
Reg. No. 48,022

Date: April 16, 2007

CORRESPONDENCE ADDRESS:

at Customer No. **05073**